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Before the
Federal Communications Commission

In the Matter of)
)
Implementation of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Home Wiring)

MM Docket No. 92-260

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To: The Commission

JOINT COMMENTS

Federal Communications Commission
Office of the Secretary

Blade Communications, Inc., Cablevision Industries Corp., Crown Media, Inc., Multimedia Cablevision, Inc., Multivision Cable TV Corp., ParCable, Inc., Providence Journal Company¹ and Sammons Communications, Inc. (hereinafter "Joint Parties"), by their attorneys, hereby submit their Joint Comments in response to the above-captioned Notice of Proposed Rulemaking ("Notice"). Each of the Joint Parties is an owner and operator of cable television systems and, accordingly, will be directly affected by the outcome of this proceeding.

Introduction and Summary

In its Notice, the Commission solicits comments on the implementation of the home wiring provision of Section 16 of the Cable Television Consumer Protection and Competition Act

¹ Providence Journal Company conducts its cable television operations through its subsidiaries Cablevision Communications, Inc. and King Videocable Company.

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of 1992 (the "1992 Act"),² which provides that within 120 days of enactment:

the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of the subscriber.

Specifically, the Commission seeks input on such issues, among others, as the treatment of existing and future installed wiring; competition among multichannel video service providers; single family and multiple unit dwellings; signal leakage responsibility; compensation for home wiring; and cable operators' property, contractual and access rights.

In summary, the Joint Parties submit that rules adopted to implement this provision should be prospective with effect only as to installations made after the effective date of the new rules. Additionally, the rules should define the demarcation point for home wiring and should expressly exclude bulk multiple dwelling unit and multiple building and other commercial wiring accounts from the scope of this provision. The rules should also recognize that cable operators must have the right, apart from any access, property and contractual rights, to service existing and future home wiring, and to recover the expense of inspecting and maintaining such wiring, in order to satisfy their

² The home wiring provision is an amendment to Section 624 of the Communications Act, 47 U.S.C. § 544.

responsibilities under the Commission's signal leakage rules and requirements and to meet both FCC and individual company imposed technical specifications and standards. And, finally, the rules should ensure that in the event an operator is required to relinquish ownership of home wiring, it must receive fair and adequate compensation.

Scope of the New Rules

a. Prospective Applicability

The proposed actions contemplated by this proceeding will impact, to some degree, existing rights and relationships of cable operators and their subscribers. The Supreme Court has carefully noted that statutes affecting substantive rights are presumed to have prospective effect; it has cautioned that:

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.³

³ Bowen v. Georgetown University Hospital, 488 U.S. 204, 208 (1988). See, also, Bennett v. New Jersey, 470 U.S. 632 (1985).

Moreover, the courts have expressly recognized that, except for certain limited provisions not applicable here, the scope of the 1984 Act is prospective in nature; the Cable Act "explicitly provides a prospective effective date for the Cable Act provisions"⁴ Nothing in the 1992 Act, which amends the 1984 Act, requires or intends a different result:

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the date of enactment of this Act.⁵

Inasmuch as the Commission is given 120 days to promulgate specific rules and requirements for the statutory provision, the Joint Parties submit that it would be in keeping with the intent of the statute as well as judicial precedent to limit the applicability of those rules to cable installations made after their effective date. If cable operators voluntarily choose to extend the provisions of any prospective home wiring rules to existing installations so as not to have to account for two categories of subscribers, they would, of course, be free to do so.

⁴ Yakima Valley Cablevision, Inc. v. FCC, 794 F.2d 737, 747 (D.C. Cir. 1986).

⁵ Section 28, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

b. Single Family and Multiple Dwelling Unit Wiring

The legislative history which accompanies the home wiring section clearly evidences Congressional intent to limit the statutory provision and implementing FCC rules to individual residential wiring:

This section deals with internal wiring within a subscriber's home or individual dwelling unit. In the case of multiple dwelling units, this section is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers.⁶

The scope of this provision thus comports with the general intent of the 1992 Act to extend regulatory consumer protection to individual cable subscribers. Additionally, it is consistent with general cable industry practices, which distinguish between individual residential subscribers, on the one hand, and bulk multiple dwelling unit ("MDU"), transient accommodations (hotels, motels) and commercial (bars, restaurants) accounts. Residential subscribers are generally served on a month-to-month basis with no fixed period of service and may terminate their subscriptions at will; their relationship with the cable operator is generally governed by the provisions of the local franchise and, if applicable, by state law or regulations.

⁶ H.R. Rep. No. 628, 102d Cong., 2d Sess. 119 (1992).

Service to bulk MDU, transient and commercial accounts, on the other hand, is typically provided pursuant to contract with a service term and other arms-length, privately negotiated contractual provisions. Moreover, the statute clearly states that it applies only to subscribers. Where an individual residing within an MDU does not have a direct subscriber relationship with the cable operator but rather receives service contracted for by a landlord, property manager or other third party, it does not appear to be the intent of Section 624(i) that such an individual would be entitled to acquire the interior wiring.⁷ The Joint Parties support the legislative finding that the home wiring provision should be limited to "only the wiring within the dwelling unit of individual subscribers" and urge the Commission to adopt this distinction in any rules which it may establish.

⁷ The statute clearly states the home wiring provision applies only to "subscribers". The distinction between individual subscribers and commercial accounts is consistent with the Commission's definition of a subscriber as "a member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it." 47 C.F.R. § 76.5(ee).

Applicability of Telephone Customer Premises
Wiring Rules and Principles

The Senate Report on S. 1880⁸ suggests that in its consideration of cable home wiring rules, the Commission should examine its rules and policies regarding telephone company customer premises wiring. While the telephone approach raises issues and concepts which are instructive and useful in this proceeding, and which are familiar to the Commission, it is not a perfect model or analogy in the cable context. One of the objectives underlying the Commission's conclusion to detariff telephone customer premises wiring was the desire to promote competition in the market for wiring installation and maintenance.⁹ In the cable context the competitive objective is to ensure that ownership of home wiring does not create a barrier to entry should the customer decide to switch to another multichannel service provider. In the telephone context the customer will rarely, at least under the current regulatory scheme, have the option of competing service providers; thus, the objectives of allowing telephone and cable customers to own and maintain their internal wiring are not parallel.

⁸ S. Rep. No. 381, 101st Cong., 2d Sess. 21 (1990).

⁹ Second Report and Order in CC Docket No. 79-105, 59 RAD. REG (P&F) 2d 1143 (1986).

Additionally, the interests of telephone companies and cable operators in maintaining control over interior wiring after it has been installed differ significantly. The monthly service charge paid to the cable operator represents compensation for not only the transmission service but also for the content of that service; thus, cable operators should be able to restrict customers from extending internal wiring to additional television receivers. Telephone companies do not, of course, have a comparable property or legal interest in the content of the transmission service which they provide.

Also of critical importance is the cable operator's obligation and responsibility to ensure that cable plant, up to the terminal of the television receiver, does not cause excessive signal leakage into the radio frequency environment. Moreover, cable operators are responsible for complying with required FCC performance specifications as well as internal standards established, monitored and enforced by the individual cable company. A typical cable system design assumes a certain number of outlets within the premises. If the resident extends the interior wiring, without the knowledge or consent of the operator, to service additional television sets, he will affect the quality of service and compliance with specifications not only at that location but also at a number of locations served by that

portion of the system. The operator must maintain a continuous level of signal throughout the entire system to all outlets, whether installed by the operator or not, even if a number of outlets are not in use at any given time.

Thus, any regulatory scheme which contemplates empowering a cable subscriber to terminate service and select another multichannel provider must remove any associated interior wiring from the cable operator's signal leakage responsibility unless and until it is subsequently reconnected to the cable system by the operator in the case of a reconnection or to a new subscriber. Similarly, if the subscriber is given the option of acquiring or individually installing interior wiring at the time of initial subscription, which some cable operators may choose to offer, the cable operator's right to establish installation criteria and standards, to control the number of outlets, to inspect and maintain the wiring, and to be compensated for any associated expense must be preserved. Telephone companies likewise have legitimate concerns about the integrity and degradation of their facilities; those concerns appear to be adequately addressed, however, by the Commission's equipment registration program. What distinguishes the two types of

service providers is cable's responsibility for RF radiation up to the customer's TV set.¹⁰

Finally, and perhaps most importantly, cable television is not a common carrier or public utility which has dedicated its facilities to public use; the Cable Act expressly recognizes that essential difference and declares that cable television is not to be regulated as a utility. Section 621(c), 47 U.S.C. § 541(c). This prohibition is a fundamental barrier to the mechanical application of telephone interior wiring rules and principles, particularly regarding compensation, to cable television operations.

Notwithstanding these differences between telephone and cable service, certain of the issues considered by the Commission in the telephone context are relevant to cable home wiring.

a. Demarcation Point

As in the case of telephone home wiring, Section 624(i) of the 1992 Act will require the Commission to establish a dividing line between system and customer premises wiring. In its telephone decisions, the Commission noted that telephone companies install a protector device to safeguard

¹⁰ Where the cable operator is unable to gain access to effectuate necessary leakage testing and repairs, the Commission should reiterate that it is ultimately the cable operator's responsibility to terminate service to that location.

the premises and the telephone network from atmospheric and electrical discharges and concluded that this would be the logical demarcation point for system and customer responsibility.¹¹ Cable systems likewise install a ground block at or near the point of entry of cable plant into the premises, and the Joint Parties agree that this definition and demarcation point would be equally appropriate in the case of single family dwelling units which have been wired for cable television service.¹² With respect to MDUs, however, the issue becomes more complex. Depending on the cable operator's practices, there may be a common building groundblock or a device at each individual dwelling unit. In either case, Section 624(i) and its legislative history make it clear that only the wiring within the subscriber's dwelling is in question. Accordingly, in the MDU environment the logical demarcation point would be at the wall plate in the individual subscriber's dwelling unit.

As previously discussed, it is questionable whether the statute intends that a person who receives cable service, but who does not have a direct relationship with the cable

¹¹ First Report and Order in CC Docket No. 81-216, 97 F.C.C.2d 527 (1984).

¹² Some cable operators choose to convey an ownership interest in wiring to subscribers from some other point, typically at the pole tap or ground pedestal. Any rules adopted in this proceeding should permit, but not require, such a practice.

operator, would be entitled to acquire ownership of the interior wiring within the dwelling unit. Moreover, in the context of telephone service to MDUs, the Commission has recognized that the owner of the premises may not be the same person as the recipient of the service and has refrained from attempting to determine ownership of interior wiring after it has been relinquished by the service provider.¹³ This issue may likewise arise in the context of termination of cable service to a bulk MDU resident. The Joint Parties submit that if the cable operator is to be subject to relinquishment of interior wiring at that point, the Commission should not attempt to determine who has the new ownership interest but should simply ensure that the cable operator is fully compensated.

b. Compensation

The Commission has addressed a number of economic issues in its consideration of telephone home wiring. For example, it has had to examine whether installation of such wiring should be expensed or capitalized and amortized. Additionally, it has examined whether costs associated with

¹³ Second Report and Order in CC Docket No. 79-105 supra. The Commission concluded that resolution of conflicting claims between customers and property owners is best left to local property law and observed that there was no federal interest in attempting to establish a national standard of general applicability.

interior wiring should be borne by the customer causing the expense or spread across all ratepayers.¹⁴ The Joint Parties recognize that these and related issues may be raised in the Commission's cable rate regulation rulemaking and do not intend to comment on them in detail in this proceeding. They point out, however, that it is the prevailing cable industry practice to not charge the full cost of an initial installation to cable service but to recover such costs, in part, through the system's rate structure. The ability to spread part of the cost of installations over all ratepayers serves the desirable objectives of universal service and affordability of cable service to low income subscribers; that flexibility should be recognized and preserved by the Commission in any rules it may adopt.

In its treatment of telephone home wiring, the Commission has acknowledged that telephone companies must be fully compensated for loss of ownership of interior wiring and that it would not order relinquishment of telephone company ownership claims "until such time as costs have been fully recovered and thus the companies will have had an opportunity to earn a reasonable return."¹⁵ As previously discussed, however, the competitive rationale for the cable

¹⁴ First Report and Order in CC Docket No. 79-105, 85 F.C.C.2d 818 (1981).

¹⁵ 59 RAD. REG. (P&F)2d at 1157.

home wiring section of Section 624(i) is to eliminate or minimize a potential barrier to an alternative multichannel service provider who might be able to use existing internal wiring. Thus, from that perspective interior wiring which is serviceable, even though it has been fully depreciated, has value to the potential competitor, and it is not inappropriate to allow the incumbent cable operator to capture that value.

An instructive analogy is provided by the "conditions of sale" provision of Section 627 of the Act, 47 U.S.C. § 547; in the event of denial of franchise renewal and a forced sale of the cable system to the franchising authority or a third party, absent a pre-1984 Act franchise provision to the contrary, the cable operator is to receive the fair market value of the system as a going concern. Congress has thus clearly recognized that if a franchising authority, at the time of franchise renewal, wishes to terminate service from an existing cable operator and to effect a transfer of that operator's system to a new service provider, it must pay the incumbent operator the then fair market value, as a going concern, of its property. Precisely the same circumstances apply in the home wiring context. If the Commission is to adopt rules requiring the sale of interior wiring upon termination of service, it must ensure that the operator receives fair market value for its property.

Conclusion

The Joint Parties urge the Commission to limit the applicability of home wiring rules which would require the sale of interior wiring upon termination of service to new installations made after the effective date of the new rules, to single family residential customers and MDU subscribers who have a direct relationship with the cable operator, and to only that portion of the system's wiring which is within the dwelling unit of the individual subscriber; bulk and commercial accounts should be excluded from the home wiring rules. Cable companies should be permitted, but not required, to grant subscribers an ownership interest in system wiring from the pole tap or ground pedestal or some appropriate demarcation point other than the groundblock or wallplate should they choose to do so. Additionally, the home wiring rules should recognize and accommodate the cable operator's responsibility for signal leakage and system technical performance. And, finally, if the Commission determines to require cable operators to afford individual cable subscribers to acquire interior residential wiring upon

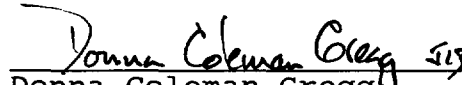
termination of service, it must ensure that the cable operator receives fair market value for its property.

Respectfully submitted,

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